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## Letter Ruling 93-3: Application of Deeds Excise to Transfers by Government Agency

April 16, 1993

You have requested a ruling on the applicability of the Massachusetts Deeds Excise, G.L. c. 64D, § 1 et seq., to the American National Red Cross' sale of the headquarters building of that organization's local chapter, [Chapter]. \*\*\*\*\* For the reasons stated below, we conclude that because it is an instrumentality of the federal government, the American National Red Cross is exempt from the imposition of the deeds excise.

### Facts

You state that the American National Red Cross (the "Red Cross") was chartered in 1905 by an Act of Congress (36 U.S.C. § 1) and that its "operations are subject to close and continuous supervision by the federal government." As examples of this you cite 36 U.S.C. § 5, which stipulates that the President appoint eight of the Red Cross' governing members, seven of whom must be officials of the federal government. You note that the Red Cross is required to make financial reports annually to the Secretary of Defense, who then submits the reports to the Congress pursuant to 36 U.S.C. § 6. You also state that the organization leases its national headquarters building in Washington, D.C. from the federal government which has placed the building under the supervision of the General Services Administration. 36 U.S.C. § 13.

### Discussion

Massachusetts imposes an excise upon any deed, instrument or writing that grants, assigns, transfers, or otherwise conveys realty. G.L. c. 64D, § 1. The transfer applies, if, at the time of the transaction, the consideration for the property conveyed exceeds one hundred dollars, excluding any lien or encumbrance existing at the time of conveyance. Id. The excise does not apply, however, "to any deed, instrument or writing to which the commonwealth, a city or town of the commonwealth, or the United States, or any of their agencies are a party." Id. The excise is paid by "the person who makes or signs the deed, instrument or writing, or for whose benefit the same is made or signed." G.L. c. 64D, § 2.

The United States Supreme Court has held that the American National Red Cross is a "federal instrumentality" for purposes of immunity from state taxation. Department of Employment v. United States, 385 U.S. 355, 357-358 (1966). In so holding, the Court noted the close relationship between the Red Cross' activity and that of the federal government:

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By statue and executive order there devolved upon the Red Cross the right and obligation to meet this nation's commitment under various Geneva Conventions, to perform a wide variety of functions indispensable to the workings of our Armed Forces around the globe and to assist the Federal Government with providing disaster assistance to the states in times of need....The Red Cross (receives) substantial material assistance from the Federal Government and time and time again both the President and the Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the government. Id. at 359-360.

(See the government functions definition of "agency" which the Massachusetts Supreme Judicial Court stated in First Agricultural National Bank of Berkshire County v. State Tax Commission, 335 Mass 172, 176 (1967), would include an "instrumentality" such as the Red Cross given its "extensive and almost all pervasive relationship with the United states." Id. at 189-190.)

Conclusion

The American National Red Cross is an instrumentality of the United States government. As such, it comes within the definition of "agency" for purposes of the deeds excise exemption. Thus, any deed, instrument or writing used to convey realty is exempt from the imposition of the Massachusetts deeds excise when the American National Red Cross is a party to the transaction.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams  
Commissioner of Revenue

MA:HMP:kt

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